



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,097	04/13/2004	Steve J.D. Bell	37070/293555	6154
23370 7590 12/27/2006 JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER ZEMAN, ROBERT A	
			ART UNIT	PAPER NUMBER
			1645	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/824,097

Applicant(s)

BELL, STEVE J.D.

Examiner

Robert A. Zeman

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26 is/are pending in the application.
- 4a) Of the above claim(s) 1-9, 13-24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1645

DETAILED ACTION

The amendment and response filed on 10-4-2006 are acknowledged. Claim 10 has been amended. Claims 1-24 and 26 are pending. Claims 1-9, 13-24 and 26 remain withdrawn from consideration as being drawn to non-elected inventions. Claims 10-12 are currently under examination.

Priority

As parent application 09/496,771 does not disclose the use of calcium phosphate particles to deliver allergens, the filing date of application 09/932,538 (8-17-2001) will be used for determining the availability of art with regard to this limitation. Moreover, as none of the priority documents disclose the limitation that the claimed particles are smooth, spherical, colloidal particles, the filing date of the instant application (4-13-2004) will be used for the determination of availability of art with regard to this limitation.

Claim Rejections Withdrawn

The new matter rejection of claims 10-12 under 35 U.S.C. 112, first paragraph, based on the limitation “smooth, solid crystalline particles...” is withdrawn in light of the amendment thereto.

The rejection of claims 10-12 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement is withdrawn in light of the amendment thereto.

New Grounds of Rejection

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al. (WO 00/15194 – IDS).

Lee et al. disclose the use of calcium phosphate particles as an adjuvant or delivery vehicle for therapeutic compounds or antigens (see abstract and pages 1-4). Lee et al. further disclose that their particles can be spherical (see page 15, line 24; that they can adjust the roughness, degree of crystallinity, particle roughness, porosity and density of their particles (see pages 10-12 and 28); and that said particles can be used to deliver allergens (see page 29, line 2). Moreover, Lee et al. disclose their particles can be administered subcutaneously, via peroral or ocular routes or as an inhalant and may be suspended (i.e. act as a colloid) in a non-toxic aqueous medium and administered as an eye drop. Said particles can also be incorporated into an ointment (see page 30, lines 20-31). Consequently, Lee et al. anticipates all the limitations of the instant invention.

Art Unit: 1645

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (571) 272-0866.

The examiner can normally be reached on Monday- Thursday, 7am -5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on (571) 272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



ROBERT A. ZEMAN
PRIMARY EXAMINER
December 20, 2006